AUG 10 1944
CHARLES ELMORE CROPLEY

No. 350

Supreme Court of the United States.

OCTOBER TERM, 1944.

EMPLOYERS GROUP OF MOTOR FREIGHT CARRIERS, INC., ET AL.,
Petitioners,

v.

NATIONAL WAR LABOR BOARD ET AL.,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA
AND
BRIEF IN SUPPORT THEREOF.

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA.

To the Honorable Justices of the Supreme Court of the United States:

The petition of the Employers Group of Motor Freight Carriers, Inc., for a writ of certiorari to be directed to the United States Court of Appeals for the District of Columbia, to bring before this Honorable Court the judgment of said Court of Appeals, entered June 2, 1944, affirming the judgment of the District Court of the United States for the District of Columbia:

I.

Statement of Matter Involved.

The petitioners are motor carriers and an association of motor carriers. The carrier employees, under a closed-shop contract, exercised their right to reopen the wage provisions thereof and refused to continue work at the previously going rate. The National War Labor Board assumed jurisdiction of the dispute and its Trucking Commission heard the same in February, 1943, after which hearing the Commission took the case under advisement.

The President of the United States by Executive Order 9328 (8 F.R. 4681), which was promulgated on April 8, 1943, withdrew from the National War Labor Board the right to grant wage increases to remove "inequalities." The Trucking Commission released a proposed decision on April 10, 1943, disregarding this limitation upon its jurisdiction and ordered a wage increase to remove alleged inequalities.

The National War Labor Board was asked to review the action of its Commission, and appeal was made to the Economic Stabilization Director both before and after approval of the Trucking Commission decision, but both requests were denied. The Economic Stabilization Director approved the proposed decision April 30, and the National War Labor Board gave its final approval thereto to become effective on April 30, 1943.

On June 14, 1943, the petitioners brought their complaint in the District Court of the United States for the District of Columbia, for an injunction to set aside the Board's order, alleging the same to be unlawful, and to result in irreparable injury. The National War Labor Board, by its attorneys, filed a motion to dismiss on the grounds that the Court had no jurisdiction over the subject-matter, and that no claim had been stated upon which relief could be granted. The Court sustained the motion.

On Appeal to the Court of Appeals for the District of Columbia, the Court of Appeals, under date of June 2, 1944, handed down a written opinion (R. 60-67, inclusive) sustaining the findings of the District Court. From the findings and rulings of the Court of Appeals this petition is filed.

II.

Jurisdiction.

Jurisdiction of this Court is derived from U.S.C., 1940 ed., Title 28, § 347 (a).

III.

Specification of Errors.

The Court of Appeals erred—

1. In refusing to require the respondents to conform their decision to Executive Orders 9250 (7 F.R. 7871) and 9328, *supra*, and to their jurisdiction.

2. In refusing to find and decide that the respondents acted arbitrarily and capriciously in refusing the petitioners a further hearing in view of Executive Order 9328.

3. In finding that the National War Labor Board's orders are not reviewable, on the ground that there is no statute authorizing review of them.

4. In refusing to recognize the legal and economic penalties attending non-compliance with the Board's orders when the Court stated:

> "No one could maintain, either judicial or administrative proceedings against the appellants upon the authority of the Board's order" (R. 62);

and again:

> "But neither Executive Order 9250 nor any other regulation forbids adherence to an old wage scale after

the Board has approved a new one. Appellants will not, by declining to adopt the new scale, subject themselves to the penalties which the Inflation Control Act provides for violation of its provisions, or to any other penalties'' (R. 63).

5. In refusing to find that the petitioners were entitled to judgment on the pleadings and in affirming the judgment of the District Court.

IV.

Prayer.

WHEREFORE the petitioners respectfully pray that a writ of certiorari may issue directed to the United States Court of Appeals for the District of Columbia commanding that Court to certify and to send to this Court a full and complete transcript of the record of all proceedings of said Court in the above-entitled cause, to the end that said cause may be reviewed and determined by this Court as provided by law.

J. NINIAN BEALL,
Attorney for Petitioners.

RALPH H. CAHOUET,
Of Counsel.

August 15, 1944.